

June 3, 2011
John W. King
Vice President
U.S. Bank, N.A.
1005 Convention Plaza
St. Louis, MO 63301

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C., 20551

Re: Docket No. R-1409: U.S. Bank Comments to proposed amendments to Regulation CC

This letter is in response to the proposed amendments to Regulation CC Availability of Funds and Collection of Checks published by the Board of Governors of the Federal Reserve System (“Board”) proposing to facilitate the banking industry’s ongoing transition to fully electronic check collection and return, including proposed amendments to condition a depository bank’s right of expeditious return on the depository bank agreeing to accept returned checks electronically either directly or indirectly from the paying bank (“Proposed Rules”). U.S. Bank National Association (“U.S. Bank”) has reviewed the proposed amendments to the rules and has further endorsed and adopted the Comments set forth by certain financial services industry organizations and technology companies (“Industry Commenters”). Because of the importance of recommendations and clarifications sought by the Industry Commenters, U.S. Bank reiterates its support of those comments and further comments as follows:

Comments to Proposed Amendments

1. Definition of an Electronic Collection Item and Electronic Return Item

U. S. Bank agrees with the Industry Commentators that there needs to be a definition of “electronic collection item” (“ECI”; 229.2 (S) 229.2 (V)) within Regulation CC. U.S. Bank requests that the Board take into consideration the following comments and suggestions regarding the proposed definition and related issues:

Agreement to Receive ECI - U.S. Bank agrees that the requirement for the paying bank to agree to receive may be too limiting and endorse the industry position that an item is an ECI if two banks exchanging items have agreed to exchange ECIs. By eliminating the requirement that the paying bank have an agreement for receipt of ECI, the exchange of the image between agreeing banks would still be subject to the new provisions (such as the warranties) in Regulation CC relating to an ECI. A suggested approach would be for the final rule to state that an item is an ECI if the two banks that are exchanging the item (regardless if the banks are depository or paying banks) have agreed to exchange ECIs

Requirement that Image be Eligible for Substitute Check Creation - We support the requirements that the image and information exchanged between two banks be sufficient to create a substitute check. We also agree that if the information in the exchange is not sufficient to create a substitute check, then the item is not an ECI and therefore not subject to Reg. CC nor should it be subject to expeditious return requirements. We suggest the Federal Reserve add an additional exception to the expeditious return requirement of Section 229.30(b)(1) to state that the paying bank would not have an obligation for expeditious return to the depository bank if the original item did not qualify as an ECI or an “electronic return” for any reason.

References to Industry Standards - We agree with Industry Commenters and recommend that the Board clarify in the final rule that the generally applicable industry standards that are identified in the Commentary are an exclusive list subject to amendment by the Board or a standards committee and support language to the effect that the standard is the ANSI X9.100-187 standard, “as may be amended from time to time by ANSI” or similar language.

2. Notice of Exception

For Sections -§ 229.13(g)(1)(i) § 229.13(g)(1)(ii) we agree with the Industry Commenters that the proposed change to include “total amount” in the notice should be optional for the disclosure, not a mandatory requirement. Providing the “total amount” of the deposit would be difficult, given the various options customers have for splitting out deposits and would place a significant resource burden on the industry to comply with this requirement. Disclosure of the “total amount of deposit” in the notice of the exception would provide little, if any, incremental improvement in the information provided to the customer.

We also agree with Industry Commentators that an electronic notice to a customer should not be mandatory regardless of whether the customer has elected electronic communication. A bank should not be required to communicate the notice of exception to the customer by means of electronic communications just because the bank is communicating electronically with the customer for other banking services, such as home banking, bill payment, mobile banking or credit cards.

We also support the Industry Commenters' recommendation that the final rule not have a standard for notice timeliness that is dependent on when the customer is expected to receive the notice; but rather, that the final rule provide that the electronic notice is timely if the financial institution sends the notice not later than the first business day following the banking day of deposit.

3. Paying Bank's Responsibility for Return of Checks

We agree with the Industry Commenters concerns regarding the commentary in Section 229.30(a)(1) on when a depository bank has agreed to accept electronic returns through a returning bank. The final rule should distribute and assign equitable risk and burden for expeditious return to both paying bank and the depository bank. As the rule and commentary exist, for this Section, the burden of the risk is on the paying bank in that the depository bank may select a returning bank that does not have a connection for electronic returns from the paying bank. The depository bank should have returning bank, paying bank and Fed agreements and connections, such that the depository bank has sufficient coverage for it to receive its returns as electronic returns. We recognize that including the Fed agreement and connections approach may provide an incentive for depository banks to sign-up with the Federal Reserve for image return services, but we believe this approach recognizes the nature of the paper and image return system as it has existed for decades, with the Federal Reserve serving as the primary return channel to the majority of the typically smaller financial institutions in the United States.

Industry Commentators have spent significant time and effort on an effective and comprehensive approach to the definition of an agreement to receive an electronic return that we believe is fair and equitable. U.S. Bank supports a final rule that a depository bank has an agreement for electronic return with a particular paying bank, and is thus entitled to expeditious return, only if at least one of the following is in place for the depository bank:

- has an agreement for electronic return directly with the paying bank,
- has an agreement for electronic return through a returning bank which in turn has an actual agreement in place with the paying bank to accept electronic returns (returning bank is not just "holding itself out" as willing to accept electronic returns),
- has an agreement for expeditious return by means of electronic return through the Federal Reserve, regardless of whether or not the paying bank has an arrangement with the Federal Reserve for sending of electronic image returns to the Federal Reserve, or
- is a member of a clearing house and depository bank has agreed to receive electronic returns through that clearing house from the paying bank.

4. Exceptions to Expeditious Return of Checks

For Section 229.30(b)(1) we agree with the exception to the obligation for expeditious return if the depository bank has not agreed to accept electronic returns. However, we believe the final rule should also include an additional exception to the expeditious return obligation if the paying bank has received an item (either as an image or a paper check) that does not qualify for return as an electronic return under Regulation CC and otherwise does not qualify for electronic return under the rules of a clearing house, image exchange network, or the Federal Reserve Operating Circular #3 which could be used by the paying bank to return the item.

For Section 229.30(b)(2) we believe the final rule should include an exception to expeditious return if the depository bank that transfers an ECI has failed to provide its electronic endorsement in the electronic addenda record as required in appendix D and in accordance with ANSI X9.100-187. We agree with requiring the paying bank to inspect the back of the image to determine if there is a printed depository bank endorsement, in those situations where the depository bank endorsement is not available from the electronic addenda record associated with the image, however, the risk of non expeditious return should rest with the depository bank that has failed to comply with the appendix D requirements, Industry Standards, Clearing House rules and other industry practices.

For Section 229.30(b)(2) we do not agree with the proposed rule that allows the paying bank to place the transferee returning bank's routing number in the electronic addendum record that is reserved for the routing number of the depository bank. This approach is not consistent with industry practice or standards, and will cause confusion at those returning banks that are also depository banks. We agree with the Industry Commenters that the final rule continue to permit industry standards, operating circulars, and clearing house rules to either waive the notice requirement for unidentifiable depository bank, to adopt the approach suggested in the proposed rule, or to establish a different means of notifying the transferee returning bank of the unidentifiable depository bank.

5. Extension of Deadline

We agree with the approach in the proposed Section 229.30(C) for providing a paying bank with an extension of time for expeditious return until time of dispatch. A paying bank should be permitted to satisfy the expeditious return requirements by dispatching the corrected return item to the depository bank in a manner such that the item will reach the depository bank by 4:00 p.m. on the second business day.

With regard to the specific questions presented by the Federal Reserve on this Section

- Whether a paying bank that sends a returned check to a returning bank and relies on this extension should bear the risk that the returning bank may not return the check expeditiously.
- Whether it should modify the extension such that the return must actually reach the depository bank within the two-day timeframe for expeditious return in order for the extension to apply.,

U.S. Bank supports altering the approach in the proposed rule to require that the depository bank actually receive the returned item by 4:00 P.M. on the second business day after the banking day on which the check was presented to the paying bank.

6. Identification of a Returned Check - Refer to Maker

We are opposed to the proposed rule's approach to prohibiting a paying bank from using the "refer to maker" return reason on a standalone basis. For the following reasons, we recommend that the final rule not prohibit paying banks from using the "refer to maker" return reason:

- There are situations where the "refer to maker" return reason is the most appropriate reason to be placed on the item, and there are no other return reasons that would better describe the reason for the return.
- The permissibility of return reasons raise a number of issues that are best addressed in industry standards groups, such as the full range of return reasons and related codes/numbers that are used for the return reasons.
- Requiring banks to reduce or eliminate in all cases the use of the "refer to maker" return reason will require substantial procedural and systems changes at the paying banks and requiring banks to revise the positive pay systems to encourage/require corporate customers to use a different return reason will come at significant time and expense to the banking industry.
- There are state laws that require directly or indirectly that banks use the "refer to maker" or similar text for return reasons.

7. Notice In Lieu Of Return

We agree with the Industry Commenters on Section 229.30(E) and support maintaining in the final rule the option for a paying bank to send a notice in lieu of return. The need for the notice does not go away because most banks have moved to image exchange and return. It may be appropriate to require a paying bank to send a notice in lieu of return in a situation where the paper item is not eligible for electronic return and a non-expeditious paper return method will be used.

We support including the MICR line of the original check in the notice of lieu of return where that information is available to the paying bank and would support the position that the paying bank should be permitted to include an image with the notice in lieu of return even if that image is not sufficient to create an electronic return. We recognize the continued use and need of the notice in lieu of return to address items that are not eligible for electronic, however we also recognize there is no uniform channel, process or set of rules for sending the electronic notice in lieu of return to depository banks. Accordingly, check image exchange operators, including the Federal Reserve Banks, should develop messaging and other rules to support this notice in lieu of return.

We do not support the use of a notice in lieu processed through the ACH system. The check and ACH systems at most banks are separate, and a forward check transaction should not have any return or notice that comes back through the ACH system. Such

routing increases risk that appropriate bank staff/systems will not receive or process the notice.

8. Electronic Image and Information Transferred As an Electronic Collection

Item or Electronic Return (Electronic Items Not Derived From Checks)

We support the proposed rule to apply the warranties under Section 229.34(E) to electronic images and the related data as if it were an ECI or an electronic return even though the item does not represent an item that ever existed as paper. Our consumer market is driving demand for more convenient ways to make a check payment. Whether it's an actual paper check, paperless check, demand draft, remotely created check, the consumer's intent is to write a check. The expectation is that the item will remain a check and be subject to the rules, the regulations, the processing, the timing and the protections that come with a check. It is in the best interest of consumers as well as the Financial Services Industry, that these items should have the benefit of the Reg. CC warranties providing protection to the consumer that initiated the check transaction, to the bank that processes the item for forward collection, to the bank that creates a paper item from the image and electronic date, and to the payee that receives the check transaction.

We agree that the Federal Reserve extend subpart C of Regulation CC to apply to the full range of fully electronic items, which would include electronic items that are created by the drawer customer and provided to the merchant or other payee for payment. Amending Regulation CC to provide a legal framework for these products will facilitate the development of these new products and other payment system improvements, to the benefit of both the bank providers and consumer and business users of the resulting payment system products.

The final rule should clarify that where two or more banks agree to exchange items that do not qualify as "electronic collection items" or "electronic returns" for any reason, the banks may by agreement (including by clearing house rule) vary or waive the application of Section 229.34(e) to the items for all persons interested in the item. If banks have agreed to exchange items that are not substitute check eligible, the sending bank should not be required under this Section to make the Section 229.34(c) warranties relating to having all data necessary to create a substitute check

9. Same Day Settlement

U.S. Bank is in agreement with the Industry Commenters and supports the transition to check image exchange for all paper checks in the United States, both for same day settlement (SDS) checks and for regular check exchanges. However, U.S. Bank believes that the proposed changes to the SDS rules, Section 229.36(d), have created confusion, uncertainty and have raised a substantial number of questions that are not addressed in the proposed rule, and make it difficult to fully evaluate the impact of potential alternatives.

The continuation of paper SDS at the current level is a result of the paying banks unwillingness to engage in electronic exchange directly with multiple presenting banks. The large banks currently engaged in SDS paper shipments do so as a matter of expense

mitigation. These presenting banks are image enabled and would like to directly present to the current SDS banks electronically, but do so at no cost under SDS rules. Paying banks that are image enabled are reluctant to establish direct connectivity with multiple banks and in most cases have declined an image relationship with the larger presenting banks. Paying banks that are large enough for direct connectivity participate only with a limited number of banks, forcing others to continue paper SDS to avoid clearing costs. In many instances paying banks that receive their inclearings electronically through a processor, require the presenting bank to pay the processor. Thus paper SDS is selected as the most cost effective option.

Electronic arrangements should be at not cost to the presenting bank as it is in the current SDS paper environment. There is no issue with the ability to present electronically to a paying bank, the issue results when cost is added. The SDS electronic functionality should be carefully outlined to duplicate the current paper environment, but with use of electronic presentment agreements. There should be no cost to the presenting bank for an electronic presentment, any bank should be able to establish direct connectivity with an identified SDS candidate, a clear and concise electronic deadline and electronic address should be established. Either a direct exchange with the bank or connectivity via the processor should constitute electronic SDS presentment, under electronic SDS guidelines. The proposed Reg. CC changes do not clearly address the establishment of basic SDS electronic functionality in lieu of paper.

We recommend that the Federal Reserve consider the following comments on this Section, and then issue a new proposed rule that addresses only the Regulation CC SDS rules:

- If agreement of the banks is required for SDS of electronic collection items, how would this proposed rule address a paying bank that wants electronic presentment of all of its SDS items, but a collecting bank still prefers (for cost or operational reasons) to present paper SDS items?
- What if the presenting bank wants to present electronically to the paying bank, but the paying bank is unwilling to enter into the agreement or establish a designated presentment point for electronic SDS items? Does the presenting bank have no recourse? Must it continue with paper presentment of SDS items?
- Would the proposed rule allow a paying bank to receive SDS items electronically from some presenting banks, and still refuse to set up other presenting banks for SDS item presentment by electronic means?
- There does not appear to be a provision in the proposed rule that says that the paying bank can require SDS paper items to be separated from other non-SDS paper forward items.
- What if the paying bank receives SDS items electronically from the presenting bank but is unwilling or unable to send an electronic return back to the presenting bank (if the presenting bank is also the depository bank)?

10. Other Requests For Comment

U.S. Bank generally supports the Industry Commenters on the six month delayed effective date for subparts C and D, provided that the final rule does not include changes related to the return reason codes, electronic notifications, modifications to balance and available day information in notices. If these changes are included in the final rule, we would need a substantially longer delayed effective date.

Changes to the return reason codes under subpart C will require programming and systems changes to our systems, our business customers' systems and applicable third party vendors' systems. It will be a substantial undertaking, taking possibly up to 24 months, for U.S. Bank to make all the changes to our systems and to ensure that our business customers have made similar revisions to their systems that use the return reason code.

Twenty-four months for system changes may seem like a long period of time to implement changes to the return reason codes in the bank systems. However, as the Federal Reserve knows, the banks are currently dealing with a number of other regulatory changes that are significantly impacting financial institutions' deposit systems, and deposit products and operational procedures. These regulatory changes are limiting the resources that the banks have to make changes to systems, products and procedures.

11. Potential Future Changes to Reduce Risks to Depository Banks

In the Proposed Rule, the Board requested comment on whether it would be desirable to reduce the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. We agree with the Industry Commenters and do not support reducing the amount of time afforded to the paying bank to decide whether or not to pay a check that has been presented to it. Shortening the time periods would be disruptive and costly to paying banks

We appreciate the opportunity to respond to the proposed amendments to Regulation CC.

If you have any questions, please call John W. King at 636-493 0965

Respectfully Submitted,

John W. King
Vice President
U S Bank